

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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DEBORAH DAGIT, :
: Plaintiff, :
: :
: -against- : **REPORT AND RECOMMENDATION**
: :
TILLAMOCK N.V., INC. AND TILLAMOCK : 12 Civ. 5649 (ALC)(KNF)
HOLDINGS, JOHN DOES 1-10, ABC, DEF, AND :
GHI, :
Defendants. :
-----X

KEVIN NATHANIEL FOX
UNITED STATES MAGISTRATE JUDGE

TO THE HONORABLE ANDREW L. CARTER, UNITED STATES DISTRICT JUDGE

On July 24, 2012, the plaintiff Deborah Dagit (“Dagit”), commenced this action by filing a complaint with the Clerk of Court. On January 3, 2013, the undersigned issued an order directing Dagit to file proof of service of the summons and complaint, with the Clerk of Court, on or before January 31, 2013. In that order, the Court cautioned Dagit that failure to file proof of service, or demonstrate good cause for such failure, would result in a report recommending to your Honor that the complaint be dismissed. As of the date of this report, Dagit has neither filed proof of service of the summons and complaint with the Clerk of Court, nor submitted any writing to the Court indicating good cause for her failure to do so.

Fed. R. Civ. P. 4(m) provides in pertinent part, that “[i]f a defendant is not served within 120 days after the complaint is filed, the court – on motion or on its own after notice to the plaintiff – must dismiss the action without prejudice against that defendant or order that service be made within a specified time.” Fed. R. Civ. P. 4(m). In addition, Fed. R. Civ. P. 41(b) authorizes a district court to dismiss an action for failure to prosecute, or to comply with a court order. See LeSane v. Hall's Sec. Analyst, Inc., 239 F.3d 206, 209 (2d Cir. 2001); Lucas v. Miles, 84 F.3d 532, 534 -35 (2d Cir. 1996). Based on the facts set forth above, dismissing Dagit’s complaint for failing to: (i) serve the complaint on the defendants within the time allotted; and (ii) prosecute the action, is warranted.

RECOMMENDATION

For the forgoing reasons, I recommend that your Honor dismiss the instant action pursuant to Fed. R. Civ. P. 4(m) and 41(b).

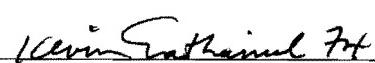
FILING OF OBJECTIONS TO THIS REPORT AND RECOMMENDATION

Pursuant to 28 U.S.C. § 636(b)(1) and Rule 72(b)(2) of the Federal Rules of Civil Procedure, the parties shall have fourteen (14) days from service of this Report to file written objections. See also Fed. R. Civ. P. 6. Such objections, and any responses to objections, shall be filed with the Clerk of Court, with courtesy copies delivered to the chambers of the Honorable Andrew L. Carter, 40 Centre Street, Room 435, New York, New York 10007, and to the chambers of the undersigned, 40 Centre Street, Room 425, New York, New York 10007. Any requests for an extension of time for filing objections must be directed to Judge Carter. *Failure to file objections within fourteen (14) days will result in a waiver of objections and will preclude appellate review.* See Thomas v. Arn, 474 U.S. 140, 470 (1985); IUE AFL-CIO Pension Fund v. Herrmann, 9 F.3d 1049, 1054 (2d Cir. 1993); Frank v. Johnson, 968 F.2d 298, 300 (2d Cir. 1992); Wesolek v. Canadair Ltd., 838 F.2d 55, 58-59 (2d Cir. 1988); McCarthy v. Manson, 714 F.2d 234, 237-38 (2d Cir. 1983).

Dated: New York, New York
March 13, 2013

Copy mailed to:
Deborah Dagit

Respectfully submitted,


KEVIN NATHANIEL FOX
UNITED STATES MAGISTRATE JUDGE